Doc Code: AP.PRE.REQ

PTO/SB/33 (07-05)
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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional): K35A0807

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on January 17, 2006

Signature N Erquiaga

Typed or printed name Nicole Erquiaga

Application Number	Filed
09/872,197	5/31/2001

First Named Inventor: L. Jeffrey Kapner III et al.

Art Unit	Examiner
2617	Joseph G. Ustaris

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

- [ ] applicant/inventor.
- [ ] assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)
- [x] attorney or agent of record. Registration number 44,188.
- [ ] attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____

Signature

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Typed or printed name

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Telephone number

January 17, 2006
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

- [ ] *Total of _____ forms are submitted.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application. No.	:	09/872,197	Confirmation No. 1905
Applicants	:	L. Jeffrey Kapner III et al.	
Filed	:	5/31/2001	
TC/A.U.	:	2617	
Examiner	:	Joseph G. Ustaris	
Docket No.	:	K35A0807	
Customer No.	:	8791	

Commissioner for Patents
PO Box 1450
Alexandria VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

In response to the Final Office Action dated October 17, 2005, Applicants respectfully request a Pre-Appeal Panel Review of the application.

Remarks/Arguments begin on page 2 of this paper.

REMARKS/ARGUMENTS

Claims 1-24 are pending in the present application.

This request is in response to the Final Office Action mailed October 17, 2005. In the Final Office Action, the Examiner rejected claims 1, 5-9, 13-17, and 21-24 under 35 U.S.C. §102(b).

Review by a Pre-Appeal Panel in light of the remarks/arguments made herein is respectfully requested.

Rejections Under 35 U.S.C. § 102

In the Final Office Action, the Examiner rejected claims 1, 5-9, 13-17, and 21-24 under 35 U.S.C. §102(b) as being allegedly anticipated by U.S. Patent No. 6,463,586 issued to Jerding (hereinafter Jerding). Applicants respectfully traverse this rejection and contend that the Examiner has not met the burden of establishing a prima facie case of anticipation.

There is clear error in the Examiner's rejections and arguments because:

> Jerding does not disclose, either expressly or inherently, a pop-up that displays first program data associated with a first program of a selected channel identifier in response to a first input ... and ... the pop-up displays second program data associated with a second program of *the selected channel identifier* in response to a second input.

As an example of Applicants' claims, in one embodiment, as set forth in Figure 2 of Applicants' patent application, a pop-up displays first program data associated with a first program (e.g. LAFEMME NIKITA) for the selected USA NETWORK CHANNEL (i.e. *the selected channel identifier*). Based upon a second input (e.g. a next selection), the pop-up next displays second program data associated with the second program (e.g. LETHAL WEAPON) of *the same selected channel identifier* (i.e. the USA NETWORK CHANNEL) in response to the second input.

Applicants respectfully submit that the Examiner has made a clear factual error as to the teachings of Jerding. The Examiner states on page 17 of the Final Office Action that:

> "Applicant further argues with respect to claims 1, 9, and 17 that Jerding does not disclose a pop-up that displays second program data associated with a second program of the selected channel identifier. However, as discussed above, the banner, menu, and browseable listing is considered a pop-up that can display FOX or "first program" along with its "first program data" furthermore the user can view another program e.g. BRAVO or "second program" along with its "second program data" shown in Fig. 7. The user is able to view the program data for FOX and BRAVO by entering the browser mode via the CBS KCBS or 'of the selected channel identifier'."

The Examiner generally repeated the same above arguments in the Advisory Action of December 23, 2005.

Looking particularly at Figure 7 and its associated text as set forth in Jerding at column 11, lines 19-33:

> "Accordingly, illustrated in FIG. 7 is a service browsable listing 160 that includes service logo and short description. The service listing 160 is presented to the subscriber and the subscriber enters the particular browse mode, as discussed above. For example, the user may select the enter key 112 so as to cause the terminal 10 to enter into the browse mode and to cause the service listing 160 to be presented. The subscriber may then utilize the activation keys 110 to scroll through the listing of services provided by the service listing 160, wherein the scrolling curser is identified by a selection box 162. While scrolling through the service listing 160, the subscriber may select the highlighted service by pressing the enter key 112. Upon doing so, the display 122 will change to that selected by the subscriber."

Figure 7 shows a service browsable listing 160 that includes service logos and short descriptions. Thus, Jerding discloses a grid-like browsable listing 160 of service logos (i.e. channel identifiers) that have been particularly ordered in accordance with embodiments of Jerding that provide for a user selected ordering scheme. Particularly, Figure 7 shows a grid-like browsable listing 160 and an information banner 120 at the bottom of the program guide that may display program guide information 132.

In fact, Jerding makes quite clear that the logo images (e.g. CNN, ABC, FOX, etc.) are associated with particular different channels (i.e. they are channel identifiers). (See Jerding, Column 9, Line 65 – Column 10, Line 6).

Applicants respectfully submit that Figure 7 of Jerding clearly shows FOX and BRAVO as separate channel identifiers for separate channels (i.e. the FOX broadcast network and the BRAVO broadcast network). These channels require separate selection and do not refer to the *same selected channel identifier.*

Particularly, when a user of Jerding selects the FOX channel identifier, as shown in Figure 7, program data, e.g., "Stories from Around the World...4:00 – 4:30 pm..." (shown at the bottom of information banner 120), associated with the current program being shown on the FOX network is displayed.

Similarly, when a user next selects the BRAVO channel identifier, this results in the selection of a different channel identifier and a different channel, resulting in the display of different program data associated with the current program being shown on the BRAVO network. This is clearly a different channel identifier and not *the same selected channel identifier*.

Applicants respectfully submit that the Examiner has made a clear factual error with regards to the teachings of Jerding, in that the selection of another channel identifier (e.g. selecting BRAVO) from the service listing 160 to display a different channel and different program guide information 132 associated with the different channel in the information banner 120, as set forth in Jerding, does not disclose, expressly or inherently, the elements of Applicants' claim limitations directed to a *pop-up displaying second program data associated with a second program of the selected channel identifier*.

The Examiner has clearly erred and a prima facie case of anticipation is not present.

Accordingly, Applicants respectfully request the Pre-Appeal Review Panel render a decision reversing the Examiner's anticipation rejection and allow the application.

Conclusion

Applicants respectfully request the Pre-Appeal Review Panel render a decision allowing the application.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Dated: January 17, 2006 By

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Date: January 17, 2006

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Nicole Erquiaga January 17, 2006
Date